

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 18.06.2019

CORAM:
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.455 of 2014

Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai.

...Appellant/Complainant

-Vs-

A.P.T.Mahadevan

...Respondent/Accused

This Criminal Appeal is filed under Section 378 of Cr.P.C. praying to set aside the order of acquittal under Section 29 of NDPS Act and for enhance of imprisonment awarded for the offence under Section 9(A) r/w 25(A) by judgment dated 05.12.2013 made in C.C.No.19 of 2008 by the learned Special Judge(i/c), II Additional Special Court under NDPS Act, Chennai - 104.

For Appellant : Mr.N.P.Kumar,
Special Public Prosecutor for DRI
Cases

For Respondent: Mr.T.S.Sasikumar

JUDGMENT

This appeal has been filed by the Senior Intelligence Officer, Directorate of Revenue Intelligence, Chennai, against the acquittal of the respondent for the offence under Section 29 of NDPS Act and to enhance the period of imprisonment imposed on the respondent for the offence under Section 9(A) r/w 25(A) by the learned trial Judge.

2 Case of the prosecution is that the respondent along with other absconding accused A1, A2 and A4 conspired in various places and planned to export Ephedrine Hydrochloride to Malasia and the respondent attempted to export 100 Kilgograms of Ephedrine. Hence case was registered against A1 to A4 for the offence under Section 9(A) r/w 25(A) and 9(A) r/w 29 of NDPS Act and since A1, A2 and A4 had absconded, case against them was split up. The respondent was arrayed as A3 and case against him was conducted in C.C.No.19 of 2008. On the side of prosecution P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P65 were marked and Material Objects 1 to 6 were produced.

3 During trial, the respondent has pleaded guilty and on the basis of the same, by judgment dated 05.12.2013, the respondent was convicted for the offence under Section 9(A) r/w 25(A) and sentenced to undergo rigorous imprisonment for a period of four months and to pay fine of Rs.1.00 lakh and the learned trial Judge had acquitted the respondent from the offence under Section 9(A) r/w 29 of NDPS Act. Being not satisfied with the quantum of imprisonment for the offence under Section 9(A) r/w 25(A) and the acquittal for the offence under Section 9(A) r/w 29, the Senior Intelligence Officer, Directorate of Revenue Intelligence has filed this appeal before this Court.

4 The learned Special Public Prosecutor appearing for the appellant would submit that the trial Court having accepted the plea of guilty of the accused, ought to have awarded a reasonable sentence, considering the nature and gravity of the offence. The appellant had attempted to export 100 Kgs of Ephedrine, which is the source in manufacture of Heroin. As per the NDPS Act, the punishment for the offence committed by the accused is maximum 10 years Rigorous Imprisonment. The learned trial Judge has erroneously awarded rigorous imprisonment only for four months, since there is no minimum sentence stated in the Act. In support of his contention, the learned Special Public Prosecutor has relied on the decision rendered by the Hon'ble Supreme Court reported in (2004) 2 Supreme Court Cases 590 (Union of India vs. Kuldeep Singh). Further, the learned trial Judge having found that there is enough materials to frame charge against the respondent for the offence under Section 9(A) r/w 29 of NDPS Act, ought to have convicted the respondent under Section 29 also. Therefore the judgment dated 05.12.2013 passed by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai, in C.C.No.19 of 2008 is liable to be set aside and the learned Special Public Prosecutor would further seek to enhance the period of imprisonment imposed on the respondent for the offence under Section 9(A) r/w 25(A) of NDPS Act.

5 According to learned counsel appearing for the respondent/accused, in the present case all the main accused had absconded and hence case against the respondent was split up. There is no previous case against the respondent at the time of filing of the present case and there is no subsequent case also against the respondent. The respondent is only a shipping Agent and has committed the offence at once in his lifetime and hence he pleaded guilty of offence. Further the substance recovered from the respondent is neither Narcotic nor Psychotropic and the trial Court after considering all the materials, has convicted the respondent for the offence under Section 9(A) r/w 25(A) of NDPS Act and sentenced to undergo rigorous imprisonment for a period of four months, which does not call for any interference

of this Court. Further the learned counsel would pray not to interfere with the period of the imprisonment and fine amount alone may be enhanced as the Court thinks fit.

6 Heard the learned counsel appearing on either side and perused the materials placed on record.

7 It is seen that originally case was registered against the respondent and three others and the respondent was arrayed as A3 and since all other accused had absconded, case was split up against the respondent. During trial, the respondent has filed a memo pleading guilty of offence and the learned trial Judge convicted the respondent for the offence under Section 9 (A) r/w 25(A) and sentenced to undergo rigorous imprisonment for a period of four months and acquitted the respondent from the offence under Section 9(A) r/w 29 of NDPS Act. In the case referred to by the learned Special Public Prosecutor, the trial Court has awarded maximum punishment of 10 years Rigorous Imprisonment and the High Court has reduced the sentence and the matter went to the Hon'ble Supreme Court and the Supreme Court upheld the judgment rendered by the trial Court. In the present case on hand, the Directorate of Revenue Intelligence has filed this appeal seeking enhancement of imprisonment.

8 This Court has carefully perused the judgment rendered by the trial Court. Even though, awarding sentence and imposing fine is discretionary power of the Court and there is no minimum sentence prescribed for the above charged offence in the NDPS Act, the discretion has to be exercised judicially and not arbitrarily. Considering the nature of the offence and also the respondent himself admitted his guilt, this Court finds that quantum of sentence is not proportionate with the gravity of the offence committed by the respondent. The trial Court has not exercised its discretionary power judicially and therefore this Court is inclined to interfere with the judgment passed by the trial Court.

9 Accordingly, conviction made for the offence under Section 9(A) r/w 25(A) is confirmed and since the respondent is only an incidental offender and there is no previous or subsequent case against him, and also considering the fact that he himself admitted his guilt, the fine amount alone is enhanced from Rs.1.00 Lakh to Rs.10.00 Lakhs. The respondent is directed to pay the fine amount of Rs.10.00 Lakhs less Rs.1.00 Lakh, to the credit of C.C.No.19 of 2008 on the file of the II Additional Special Court under NDPS Act, Chennai - 104, which has already been paid by him, in default, to undergo rigorous imprisonment for three years. The enhanced fine amount shall be paid by the respondent within a period of four weeks from the date of receipt of a copy of this order without fail.

10 With the above modifications, the criminal appeal is partly allowed.

Sd/-
Assistant Registrar (CS VII)

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Sub Assistant Registrar

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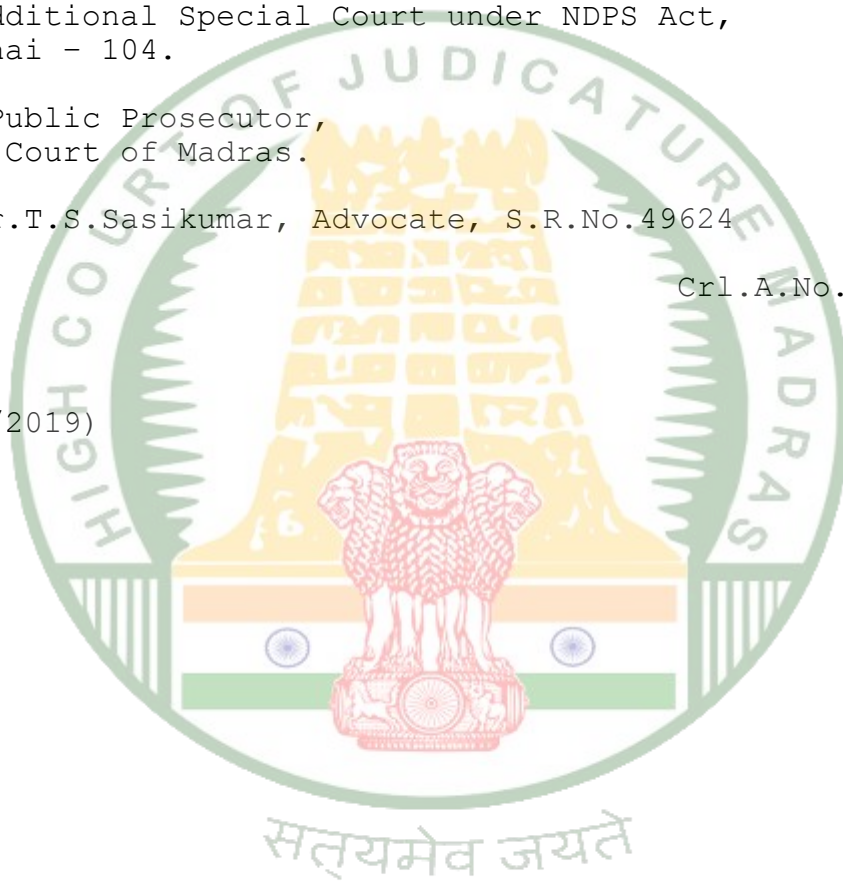
1. The Special Judge, (I/c)
II Additional Special Court under NDPS Act,
Chennai - 104.
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.T.S.Sasikumar, Advocate, S.R.No.49624

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SSV (CO)

RRS (19/06/2019)



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